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Gough Square Chambers' consumer credit column: September 2022

by Sabrina Goodchild, Gough Square Chambers

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Ruth Bala, Lee Finch, Sabrina Goodchild and George Spence-Jones are all specialist consumer credit counsel at Gough Square Chambers. On a regular basis, they share their views with Practical Law Financial Services subscribers on topical developments or key issues relating to consumer credit.

In the September 2022 column, Sabrina Goodchild considers the FCA's expectations relating to the cost-of-living crisis in the context of retail lending.

FCA's expectations in cost-of-living crisis

Introduction

In circumstances where the headline average inflation rate has been over 9% since June, the Institute of Fiscal Studies has estimated that the poorest households may face average inflation rates as high as 14%, and 27% of the population are classified as having low financial resilience, the FCA has set its sights on managing the cost-of-living crisis. Energy previously focused on navigating the COVID-19 pandemic has been redirected and refocused on the next challenge faced by the UK population: the cost of living.

Within its dedicated "Cost of living: Information for firms" webpage, which is regularly updated and pulls together publications, letters, news and speeches on the issue, is the FCA's first cost of living Dear CEO letter.

Dear CEO letter

The Dear CEO letter (dated 16 June 2022), was sent to over 3,500 firms, including retail banks and consumer credit firms. Interestingly, it was also sent to unauthorised buy-now-pay-later (BNPL) providers, with the explanation that:

> "We are also sending a copy of this letter to several unauthorised firms offering exempt BNPL, and similar products, so that they can see our expectations for authorised lenders and strongly encourage them to follow the guidance in relation to exempt credit products".

This inclusion accords with the recent trend for the FCA to be more proactive, interventionist and, as evidenced here, expansionist.

So what does the letter say? The FCA explains that as an extension of its "borrowers in financial difficulty" (BiFD) work conducted during the peak of the pandemic, it has identified three principal issues. Firstly, that customer circumstances are not explored fully by firms. Secondly, in circumstances where the number of customers classed as vulnerable is expected to increase, that firms are not consistently identifying the specific needs and circumstances of customers with vulnerable characteristics. And finally, that firms are not consistently helping customers in financial difficulty to access money guidance or free debt advice.

Following a reminder of firms' treating customers fairly (TCF) duties, the tailored support guidance for mortgages, consumer credit and overdrafts, which remain in force to deal with the cost-of-living crisis, and the FCA's vulnerable customer guidance, the FCA set out seven non-exhaustive expectations for firms. In summary, these are:

- Providing customers with appropriate levels of care and support, keeping in mind that vulnerable customers may require different levels of support.
- Giving borrowers in financial difficulty appropriately tailored forbearance.
- Supporting borrowers showing financial difficulty, including by making them aware of and helping them access money guidance and free debt advice.
- Ensuring that fees and charges are fair and do not cover more than the firm's costs.
- Ensuring that the approach to new borrowers takes account of financial pressure that they may be facing.
- Considering what can be done to encourage mortgage borrowers to think about switching to a less costly option.

- Helping consumers to avoid falling victim to scams or illegal money lending.

In line with the FCA's new focus on outcomes, as opposed to processes, the FCA makes it clear that:

> "Our expectations in this letter are based on our existing principles, rules and guidance, which are we applying to ensure that firms act in their customers' interests. Later this year, we will finalise any rules in relation to the consumer duty, but we are not waiting for the duty to come in before we act to improve consumer outcomes".

Comment

High-level outcomes-based expectations are all well and good, but specifically what adjustments should firms be considering making to their policies and procedures to comply with these expectations? There appear to be four headline points apparent from the FCA's letter, which could constitute a checklist for firms:

- Communication.
- Forbearance.
- Oversight.
- Fees and charges.

Communication

Communication is at the heart of the FCA's strategy on the cost-of-living crisis. Firms should ensure that a range of communication channels are available to customers, including by allowing customers to select their communication preferences. Of particular focus for vulnerable customers is the ability to contact firms via telephone, which is of particular note to newer digital-only firms, which to date may only have offered contact via email.

As for the content of these communications, firms should make sure that communications are tailored to the specific customer, or group of customers, and set the right tone by explaining the benefits of engaging early and emphasising the support that can be given. Given the FCA's focus on money guidance and free debt advice, firms should consider expressly referring to this in any correspondence that is sent.

Forbearance

When considering the need for forbearance, firms should take into account not just current financial and personal circumstances of the borrower, but also expected future circumstances, much like the affordability requirements on mortgages. And of course, to obtain this information, firms must communicate with customers, to elicit this information.

Firms should also consider increasing the flexibility in the forbearance options offered, tailoring the offering to specific customers, having taken into account their specific needs. Further, a strategy of active review of arrangements put in place, which accords with the new consumer duty, should also be implemented. With the number of customers needing forbearance likely to increase, firms are advised to ensure they have enough staff sufficiently trained to deal with such customers.

Oversight

Firms should ensure that customer experiences and outcomes are monitored so that quality issues can be identified, corrected and fed into governance processes. Traditionally, firms have done this by focusing on complaint numbers and complaint outcomes. Rather, firms are encouraged to take a more holistic approach by, for example, considering customer feedback and monitoring the frequency and amount of charges imposed on vulnerable customers.

Fees and charges

Firms should review charges imposed on vulnerable customers to ensure they are fair and only reflect the costs incurred. With an increased likelihood of costs being imposed, firms should consider the effect of cumulative charges, as opposed to stand-alone charges, if there is the potential for fees to be regularly incurred.

What happens next?

As for what can be expected next, the FCA have promised to publish detailed findings from its BiFD work later in the year and have identified a plan to consult on the future of the tailored support guidance, which may include changes to the FCA's Handbook. With an ever-changing landscape, the obligations on firms are set to continue to increase.

Gough Square Chambers' consumer credit columns

For previous consumer credit columns written by barristers at Gough Square Chambers, see Practice note, Gough Square Chambers' consumer credit column.